

John H. Redmond appeals the denial of his “Motion to Compel for Earned Credit Time.” Because he did not demonstrate he exhausted his remedies with the Department of Correction (“DOC”) before seeking judicial review, we dismiss his appeal.

FACTS AND PROCEDURAL HISTORY

On January 5, 2005, Redmond pled guilty to possession of cocaine as a Class B felony. On February 3, 2005, he was sentenced to ten years: six in the DOC, two in the Vanderburgh County Corrections Complex (“VCCC”), and two in Drug and Alcohol Probation Services. He was given credit for 256 days served.

Redmond was placed on work release through VCCC on April 21, 2006. On May 5, 2006, Redmond left VCCC for work and did not return. On May 9, 2006, a petition to revoke his VCCC status was filed. While fleeing from officers, Redmond broke into an apartment. As a result, three new charges were filed against Redmond: failure to return to lawful detention, a Class D felony; residential entry, a Class D felony; and resisting law enforcement, a Class A misdemeanor.

On October 16, 2006, Redmond admitted the facts in the petition to revoke and pled guilty to the new charges. On November 30, 2006, he was sentenced to finish his original ten-year sentence in the DOC and given credit for 914 days served plus good time credit. He received an aggregate sentence of two years for the new charges, which were to be served consecutive to his original sentence. He was given no credit toward these sentences, as all the credit he earned was applied to his original sentence.

Redmond claims he earned 183 days for obtaining his GED, 183 days for completion of Thinking for a Change, and ninety days for completion of a substance

abuse program. After he was returned to the DOC, Redmond came to believe he had not been given credit for his participation in these programs, and he began corresponding with prison officials. For reasons that are not entirely clear from the record, on February 7, 2007, the trial court amended the abstract of judgment for his original sentence to show credit for an additional 365 days.¹ On March 7, 2007, Redmond filed a “Motion to Compel for Earned Credit Time,” alleging he should have received 455 days instead of 365, attributing the difference to the ninety days earned for completing the substance abuse program. (Appellant’s App. at 51.)² The court denied the motion on March 8, 2007. The docket entry states, “Court will deny [Redmond’s] motion to compel for earned credit time in that court has given [Redmond] all credit time he will receive. Any additional time earned to be given by the DOC.” (*Id.* at 39.) Redmond appeals this ruling.

DISCUSSION AND DECISION

The State argues that according to *Members v. State*, 851 N.E.2d 979 (Ind. Ct. App. 2006), Redmond’s appeal must be dismissed. We agree.

¹ The amendment was apparently in response to a petition filed by Redmond. The amended abstract states: “Court grants [Redmond’s] petition for jail time credit and gives [him] an additional 365 days for a total of 1279 days credit.” (Appellant’s App. at 50.) The box titled “Number of days confined prior to sentencing” contains the notation “1279 days plus good time.” (*Id.*) Redmond was first incarcerated on May 30, 2004 and it is apparent he could not have served 1279 days by November 30, 2006; therefore, that number must include some credit time.

² Redmond did not number the pages of the Appendix consecutively, as required by Ind. Appellate Rule 51(C) (“All pages of the Appendix shall be numbered at the bottom consecutively, without obscuring the Transcript page numbers, regardless of the number of volumes the Appendix requires.”). We have renumbered the pages consecutively for purposes of citing the Appendix in this opinion.

While incarcerated in the DOC, Members obtained a high school diploma. He sought educational credit pursuant to Ind. Code § 35-50-6-3.3, which the DOC denied. Members then petitioned for post-conviction relief, and the post-conviction court also denied his request for credit time. On appeal, we dismissed for lack of subject matter jurisdiction, reasoning Members had to exhaust administrative remedies.

. . . [W]e note that the question of subject matter jurisdiction entails a determination of whether a court has jurisdiction over the general class of actions to which a particular case belongs. The only inquiry relevant to a determination of whether the post-conviction court had subject matter jurisdiction is whether the kind of claim advanced by a petitioner in the post-conviction court falls within the general scope of authority conferred upon that court by constitution or statute. Moreover, subject matter jurisdiction cannot be waived and courts are required to consider the issue *sua sponte* if it is not properly raised by the party challenging jurisdiction.

* * * * *

While the trial court determines the initial credit time when an offender is sentenced, modification to that credit time – which includes modification because of educational credit – is the responsibility of the DOC. Stated differently, the trial court imposes the sentence, and the DOC administers the sentence. As a consequence, the DOC maintains the responsibility to deny or restore credit time.

Finally, we note that our legislature has specifically determined that offender grievances arising out of administrative acts that affect an offender are to be resolved through a departmental grievance procedure.

* * * * *

In the present case, because Members is challenging the DOC's denial of his educational credit time, his grievance is with the DOC. He must, therefore, exhaust all of his administrative remedies with the DOC before resorting to the judicial system. Inasmuch as Members has failed to exhaust his available remedies within the DOC, the post-conviction court lacked subject matter jurisdiction to entertain his education credit time complaint and, thus, the judgment must be set aside and this appeal dismissed.

Members, 851 N.E.2d at 981-83 (citations omitted).

Redmond claims he is entitled to credit for a substance abuse program, which is educational credit authorized by Ind. Code § 35-50-6-3.3. Therefore, it is the DOC's responsibility to determine whether he has earned and has been credited this time, and he must exhaust his remedies with the DOC before seeking judicial review.

In Redmond's appendix, there is a section titled "Department of Correction Documents/Exhaustion of Administrative Remedies." This section contains correspondence with various prison officials and culminates in a document titled "Classification Appeal" and signed by the Assistant Superintendent. The Classification Appeal states, "Your time has been calculated in accordance with sentencing documents provided by the court. You may wish to seek relief through the sentencing court." (Appellant's App. at 177.) This document suggests the DOC has reached its final decision or that further remedies would be futile; however, this document is signed March 27, 2007 – twenty days after Redmond filed his motion with the trial court. As the DOC had not reached its final decision when Redmond filed his motion, the court was without jurisdiction to consider it. Redmond must, if he has not already, exhaust his remedies with the DOC. If he desires further review, he may then petition for post-conviction relief. *See McGee v. State*, 790 N.E.2d 1067, 1068-69 (Ind. Ct. App. 2003); *trans. denied* 804 N.E.2d 755 (Ind. 2003).³

Dismissed.

RILEY, J., concurs.

³ Alternatively, on exhaustion of administrative remedies, if Redmond believes the credit time would entitle him to immediate release, then he should file a *habeas corpus* petition. *See McGee*, 790 N.E.2d at 1069.

KIRSCH, J., concurs in result.